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U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

2006 AUG 17 A 11:14

IN THE MATTER OF

JOAQUIN RODRIGUEZ

FAA DOCKET NO. CP05SO0049
(Civil Penalty Action)

DMS NO. FAA-2005-22885 - 7

**ADMINISTRATIVE LAW JUDGE'S ORDER
GRANTING MOTION FOR DECISION**

On May 16, 2006, Chief Judge Yoder issued an order denying a motion by the Complainant to deem the allegations of the complaint as having been admitted. In that order he held that the Respondent had good cause for his failure to file an answer. The Chief Judge's order directed the Respondent to file an answer or a motion directed to the complaint on or before June 20, 2006. The Respondent has not done so. The Complainant has asked me to dismiss the Respondent's request for a hearing.

The Procedural Rules under which our hearings are held require the Respondent to file an answer to the complaint or a motion directed to its sufficiency. The Respondent has failed to comply with this rule, and an express order to do so by the Chief Judge has not persuaded him to do so. The consequences of a failure to file the Rules are set forth in the Rules themselves. Section 13.209(f), 14 C.F.R. §13.209(f), says that "a person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint." The Respondent has had two chances to file an answer and now must suffer the consequences of his failure to do so.

The Complainant sought to remedy the Respondent's failure by filing a motion to dismiss his request for a hearing. Such a motion is appropriate only prior to the filing of a complaint. The proper remedy for the failure to file an answer is a motion for decision. Hence, the Complainant's latest pleading shall be deemed a motion for decision.

The Complainant's motion for decision is granted. The Respondent is liable for a civil penalty by reason of the matter pleaded in the complaint, the allegations of which will hereafter be regarded as true and correct. The hearing will be limited to the issue of the appropriate sanction, i.e., the amount of the civil penalty to be assessed against the Respondent.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Isaac D. Benkin". The signature is fluid and cursive, with the first name "Isaac" written in a smaller, more compact script than the last name "Benkin".

Isaac D. Benkin
Administrative Law Judge

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The Honorable Ronnie A. Yoder
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